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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
08/989,352	12/12/1997	STEPHEN B. MAGUIRE	1147-97	8734

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EXAMINER
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COOLEY, CHARLES E

ART UNIT	PAPER NUMBER
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1723

DATE MAILED: 04/06/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 08/989,352	<b>Applicant(s)</b> MAGUIRE, STEPHEN B.	
	<b>Examiner</b> Charles E. Cooley	<b>Art Unit</b> 1723	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 19 December 2003.
- 2a) ☒ This action is **FINAL**.      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-38 and 41-58 is/are pending in the application.
- 4a) Of the above claim(s) 54-58 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 2,8-11 and 30-35 is/are allowed.
- 6) ☒ Claim(s) 1,3-7,12,16-29,36-38 and 41-53 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 1-38 and 41-58 are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>07082003</u> . | 6) <input type="checkbox"/> Other: _____  |

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## **DETAILED ACTION**

### ***Election/Restriction***

1. This application contains claims 54-58 are drawn to an invention nonelected with traverse. A complete reply to the final rejection must include cancellation of nonelected claims or other appropriate action (37 CFR 1.144) See MPEP § 821.01. Note the subject matter of these claims is presented in divisional application 10/191,976 assigned to another art unit.

### ***Information Disclosure Statement***

2. The information disclosure statement (IDS) submitted on 8 JUL 2003 has been considered by the examiner. Note the attached PTO-1449 form.
3. The information disclosure statement filed 14 JUL 2003 fails to comply with 37 CFR 1.98(a)(1), which requires a list of all patents, publications, or other information submitted for consideration by the Office. It has been placed in the application file, but the information referred to therein has not been considered. The examiner searched the IFW file for the 1449 form but it is lacking from the file.

### ***Drawings***

4. The proposed drawing correction and/or the proposed substitute sheets of drawings, filed on 04 APR 2001 have been approved by the Examiner.

***Specification***

5. The disclosure is objected to because of the following informalities:
  - a. In the amended paragraph on page 2 (the last paragraph):  
In line 3, the term "components" added by amendment should be --compartments--; in line 5, "one component for solid color additive" should be --one compartment for solid color additive--.
  - b. In the last paragraph on page 23, the status of 08/763,053 should be updated as being U.S. Patent 6,007,236.  
Appropriate correction is required.
6. The abstract is acceptable.
7. The title is acceptable.

***Claim Objections***

8. Claim 22 still lacks ending punctuation. Claims terms which are enclosed brackets are considered stricken from the claim.
9. Correction is required.

***Claim Rejections - 35 USC § 112***

10. Claims 6, 7, 12, 14, 16-29, and 44-53 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Pursuant to 37 CFR 1.121, the

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current listing of claims is considered to replace all prior claims in the application.

Claims terms which are enclosed brackets are considered stricken from the claim.

Claim 6, lines 16-17: "said upwardly extending surfaces" lacks antecedent basis - note intervening claim 3 was not included in amended claim 6. In lines 17-18, the structural cooperation between the upwardly extending surfaces and the housing is vague - are these surfaces part of the housing? (see claim 3).

Claim 7, last two lines: "said upwardly extending surfaces" lacks antecedent basis - note intervening claim 3 was not included in amended claim 7 and the structural cooperation between the upwardly extending surfaces and the housing is vague - are these surfaces part of the housing? (see claim 3).

Claim 12: "said valve means" lacks antecedent basis - change to--said valve--.  
Note claim 12 in the listing of claims presents no amendments to the claim.

Claim 14: "said valve means" lacks antecedent basis - change to--said valve--.

Claim 16, line 3: "housing" should be --hopper--.

Claim 44: "the strap" and "said strap" lack antecedent basis. Note the reference to the strap was removed from claim 43.

Claim 45: "said strap" lacks antecedent basis.

Claim 46 is worded in an awkward and confusing manner.

### ***Double Patenting***

11. A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.

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12. Claims 36-38 and 41 are rejected under 35 U.S.C. 101 as claiming the same invention as that of claims 28, 29, 30 and 50-51 of prior U.S. Patent No. 6,467,943 (Serial No. 09/076,498) to Maguire. This is a double patenting rejection.

13. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.3218 may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

14. Claims 1, 3-5, and 41-42 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 2, 22, 27, 33, and 34 of U.S. Patent No. 6,467,943 to Maguire. Although the conflicting claims are not identical, they are not patentably distinct from each other because the patented claims 1, 2, 22, 27, 33, and 34 anticipate the application claims 1, 3-5, and 41-42. See *In re Goodman*, *supra*.

15. Claim 43 is rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 33 of U.S. Patent No. 6,467,943 to Maguire in view of the photographs of UNA-DYN gravimetric blender (circa 1993).

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Claim 33 of U.S. Patent No. 6,467,943 to Maguire recites the subject matter of claim 43 of the instant application with the exception of the means for connecting the panel with the frame. The photographs of UNA-DYN gravimetric blender show a transparent panel and a frame with fastening means (hinges and bolts) for connecting the panel to the frame. It would have been obvious to one having ordinary skill in the art, at the time applicant's invention was made, to have provided the invention defined by claim 33 of U.S. Patent No. 6,467,943 to Maguire with means for connecting the panel with the frame as shown by the photographs of UNA-DYN gravimetric blender for the purpose of enabling the panel to be swung away from the frame (via the hinges) for allowing access to the interior of the frame for inspection, repair, etc.

***Allowable Subject Matter***

16. Claims 1, 3, 4, 5, and 42-53 would be allowable if the obviousness-type double patenting is overcome without raising new issues after final rejection.
17. Claims 6, 7, 12, 14, 16-29, and 44-53 would be allowable if rewritten or amended to overcome the rejection under 35 U.S.C. 112 without raising new issues after final rejection
18. Claims 2, 8, 9, 10, 11, 13, 15, and 30-35 are allowable over the prior art.
19. Claims 39 and 40 are cancelled.
20. Claims 54-58 are withdrawn from consideration.



***Response to Amendment***

21. Applicant's arguments with respect to the pending claims have been considered but are not persuasive. Pursuant to 37 CFR 1.121, the current listing of claims is considered to replace all prior claims in the application. Claims terms that are enclosed within brackets (or which are presented with strikethrough) are considered stricken from the claim and thus cannot be considered positively recited limitations of the claim. Accordingly, the last response essentially presents the same claims considered in the prior office action. Since the examiner can only consider the positively recited subject matter of the claims on the merits and since no new grounds of rejection are presented in this office action, this action is properly made final (MPEP 706.07(a)).

***Conclusion***

22. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

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23. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Charles E. Cooley whose telephone number is (571) 272-1139. The examiner can normally be reached on Mon-Fri. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

24. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Charles E. Cooley  
Primary Examiner  
Art Unit 1723

2 April 2004